82-1353

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FILED
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ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

No. _____

LEON WHITE, et al., Petitioners,

v.

C. VAUGHN ROUGHTON, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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Petitioners

February 7, 1983

QUESTIONS PRESENTED

1. Whether, in an action for enforcement of a consent decree, it is permissible for a court to resort to extrinsic aids and disregard the literal terms of the consent decree when the language of the decree is not ambiguous.

2. Whether a party to a Consent Decree can unilaterally repeal a provision incorporated into the Consent Decree.

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PETITION FOR A WRIT OF CERTIORARI TO THE
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The petitioners, Leon White, et al., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in

this proceeding on September 9, 1982.[1]

OPINION BELOW

The opinion of the Court of Appeals is reported at 689 F.2d 118-121, and appears in the Appendix hereto. The opinion of the District Court for the Central District of Illinois was not reported.

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[1] The Petitioners are Leon White, Elester Walker and Beatrice Silagy, individually and on behalf of the certified classes of all others similarly situated which they represent.

The respondents are 1) William Rice, successor to C. Vaughn Roughton, Township Supervisor of the City of Champaign Township, Champaign, Illinois, and 2) City of Champaign Township.

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was entered on September 9, 1982. A timely petition for rehearing en banc was denied on November 9, 1982, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

PROVISIONS INVOLVED

There are no constitutional provisions, treaties, statutes, ordinances or regulations involved in this action. This action is based on contract law and on the case law concerning judicial enforcement of consent decrees.

STATEMENT OF THE CASE

A. History of the Case

The petitioners are two certified classes consisting of all applicants for and all recipients of General Assistance from City of Champaign (Illinois) Township.

In 1974 the petitioners brought an action under 42 U.S.C. §1983 against the Township and its Supervisor (respondents herein), seeking declaratory and injunctive relief from the respondents' policy and practice of administering General Assistance without having and applying written standards of eligibility and without providing adequate and written notification of their decisions, denying Due Process of Law to the petitioners. In addition, the petitioners sought retroactive monetary relief for each class member

who had in the past been qualified for benefits but had been illegally denied those benefits. Preliminary injunctive relief was sought, but denied.

In 1976, the Seventh Circuit Court of Appeals reversed the District Court's denial of preliminary relief and specifically held that Due Process of Law required the respondents to have and apply written standards of eligibility and to provide adequate written notification of their decisions. White v. Roughton, 530 F.2d 750 (7th Cir. 1976).

B. The Consent Decree and Standards

The parties then agreed to a settlement of all issues and a Consent Decree was entered by the District Court on June 8, 1976.

The Consent Decree provided the petitioners with both the declaratory and

injunctive relief being sought concerning the need for written standards and written notification of decisions.

In addition, the parties had negotiated a specific set of written standards to be used by the respondents, which were "adopted" by the respondents "pursuant to this settlement." Those negotiated standards were attached to the Consent Decree and expressly incorporated in the Consent Decree by reference in the same paragraph which permanently enjoined the respondents from failing to apply written standards. (R.App. 4)

The Consent Decree specifically stated that "...the standards shall from this day forward be substantially in compliance with the standards adopted pursuant to this settlement and attached hereto as Exhibit 2." (R.App. 4)

The Consent Decree also specifically enjoined the respondents "...from enforcing any rules or regulations...insofar as such enforcements are in conflict with the Orders of Court issued as a part of or pursuant to this Decree," and jurisdiction was retained..."to enforce and modify, if necessary, the provisions of this Decree." (R.App.4)

Specifically "in consideration" for the respondents' agreement to the provisions of the Consent Decree, "particularly the entry of a permanent injunction against" the respondents, the petitioners waived their claims for retroactive benefits. (R.App. 4)

C. The Unilateral Repeal of a Provision

The written standards negotiated by the parties and adopted by the respondents contained a provision (§2-4) requiring the

respondents to provide "emergency assistance" to petitioners "when necessary for an applicant's or recipient's health and well-being." (R.App.5)

On February 10, 1981, the respondents unilaterally repealed that "emergency assistance" provision. Neither the petitioners' consent, nor the District Court's consent, was sought or received for that modification of the Standards which had been incorporated into the Consent Decree. Appendix, p.4.

D. The Contempt Action

The respondents no longer would provide emergency assistance to those petitioners who would have been eligible for it under the terms of the negotiated Standards.

The petitioners accordingly filed contempt papers against the respondents

seeking judicial enforcement of the Consent Decree, pursuant to the Court's general contempt powers as well as the consent decree provision explicitly retaining jurisdiction to enforce the provisions of the Decree. The Motion for a Contempt Judgment was denied by the District Court. The petitioners then appealed to the Seventh Circuit Court of Appeals pursuant to 28 U.S.C. §1291.

The Court of Appeals focused on the following language from the Consent Decree:

> The standards shall from this day forward be substantially in compliance with the standards adopted pursuant to the settlement and attached hereto as Exhibit 2.

The Opinion of the Circuit Court found that the above language is not ambiguous. The Court stated:

It is quite true, as the Plain-

> tiffs argue, that the italized clause, standing alone, requires the Township to adhere, at least substantially, to the standards set forth in the Exhibit to the Decree, and that the repeal of emergency assistance is not substantial compliance. Appendix, pp.5-6.

The Circuit Court then decided that even though the language of the Decree is not ambiguous,

> ...it is permissible to construe unambiguous language where construction is necessary to determine the intended rather than the literal meaning of the Decree. Appendix, pp.9-10.

It further stated:

> ...while the language of the contract is normally the best evidence of that intent, a Court can properly disregard even unambiguous language when it is convinced that the parties meant something different from what they said. Appendix, p.10.

The Circuit Court then went on to hold that the unambiguous requirement in the Consent Decree (i.e., substantial

compliance with the negotiated Standards) was "useless surplusage" which could be disregarded by the respondents.

The basis asserted for this rejection of the unambiguous language was that the Court did "...not believe that the parties meant to include it." [2] Appendix, p.13.

The Seventh Circuit therefore concluded that the respondents did not violate the consent decree by unilaterally repeal-

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[2] No "extrinsic evidence" had been submitted by either party as to the meaning of the Consent Decree. The Court therefore relied on its "doubt" that the respondents would have been "...so inept a bargainer..." and its "doubt" that the respondents would have agreed to it "...without insisting that the decree contain a more flexible machinery for modification ..." than is traditional. No consideration was given to the intent of the other party to the consent decree (the petitioners). Appendix, pp.13-18.

ing the emergency assistance provision in the Standards.[3]

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER COURTS OF APPEALS AS TO WHEN THE USE OF EXTRINSIC AIDS IN THE INTERPRETATION OF CONSENT DECREE LANGUAGE IS PERMISSABLE UNDER SUPREME COURT DECISIONS.

The Seventh Circuit clearly decided in its Opinion below that it is permissable for a court to resort to extrinsic aids when interpreting consent decree language in all cases, even when the language is not ambiguous:

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[3] As the Seventh Circuit had just decided in its Opinion herein that extrinsic aids could be used to interpret (and even disregard) unambiguous language, the petitioners then submitted affidavits showing that the parties in fact did intend for the unambiguous language to be taken literally; the Petition for Rehearing or Remand was denied.

> Nor do we agree with the plaintiffs that interpretation is permissible only if the language of the decree is ambiguous. Sportmart does not support that proposition. We said there that "the ambiguity of the decree's application to the present case is plain and resort to the circumstances surrounding the formation of the consent decree in order to construe its terms, if ambiguity be necessary at all before resort to such extrinsic aids, is proper." 601 F.2d at 317 (emphasis added). This formulation leaves open for another day-this day-the question whether it is permissible to construe unambiguous language where construction is necessary to determine the intended rather than the literal meaning of the decree.
>
> * * *
>
> ...while the language of the contract is normally the best evidence of that intent, a court can properly disregard even unambiguous language when it is convinced that the parties meant something different from what they said. Appendix, p.10.

That decision expressly allowing unambiguous terms to be disregarded is in

direct conflict with the decisions of the Fifth Circuit Court of Appeals; it also conflicts with the First Circuit reading of Supreme Court decisions on consent decree enforcement.

The Fifth Circuit has expressly decided that a Consent Decree must be enforced as written, unless the language is ambiguous. Strouse v. J. Kinson Cook, Inc., 634 F.2d 883, 885 (5th Cir. 1981). Other Fifth Circuit Court of Appeals decisions expressing that same view include Roberts v. St. Regis Paper Co., 653 F.2d 166, 171 (5th Cir. 1981), and Eaton v. Courtaulds of North America, Inc., 578 F.2d 87 (5th Cir. 1978). In Eaton, the Fifth Circuit Court of Appeals stated that resort to extrinsic considerations was improper because "...the language of an agreement, unless amgibuous,

represents the parties' intention." Eaton, 578 F.2d at 90.

The Fifth Circuit decisions are based on the Supreme Court decisions which hold that, for purposes of enforcement, consent decrees are to be treated as contracts, using the "four corners" rule. United States v. Armour and Co., 402 U.S. 673 (1971), United States v. Atlantic Refining Co., 360 U.S. 19 (1959), Hughes v. United States, 342 U.S. 353 (1952), and United States v. ITT Continental Baking Co., 420 U.S. 223 (1975).

Although the Fifth Circuit recognizes, as did the Seventh Circuit below, that ITT Continental allowed reliance upon certain aids to construction, the Fifth Circuit cases cited above explicitly hold that ITT Continental allows such resort to extrinsic aids only if the language is ambiguous.

Indeed, the opinion in ITT Continental itself indicates that resort to outside aids is permissible only to explain "ambiguous terms." 420 U.S. 238, fn. 11.

The First Circuit has also read ITT Continental to require ambiguity before resort to extrinsic aids is proper. Cornelius v. Hogan, 663 F.2d 330, 333 (1st Cir. 1981). See also United States v. American Society of Civil Engineering, 446 F.Supp. 808, fn. 14 (S.D.N.Y. 1977).

Thus, a direct conflict exists between the Circuits as to whether the Supreme Court decisions permit language of a consent decree to be disregarded when it is unambiguous.

These conflicts justify the grant of certiorari to review the judgment below.

2. THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS IN THE ENFORCEMENT OF CONSENT DECREES AND ALL CONTRACTS.

The decision below is a novel one. For the first time, a court has held that it is permissible to construe unambiguous language in order to determine the intended rather than the literal meaning of a consent decree.

Moreover, the opinion below does not limit this new rule to consent decrees; it speaks to all contracts:

> ...while the language of the contract is normally the best evidence of that intent, a Court can properly disregard even unambiguous language when it is convinced that the parties meant something different from what they said. Appendix, p.10.

The decision then goes one step further. It puts upon the party seeking to enforce the literal meaning of unambig-

uous terms the burden of proving through the introduction of extrinsic evidence that the parties in fact meant what they said. Appendix, p.18.

In effect, the Seventh Circuit is expanding (if not violating) the Supreme Court decision in ITT Continental, and in so doing it is ensuring that the substantial problems predicted by the dissenters in that case will come about.

The decision below will effectively require (not just permit) the production of extrinsic evidence in every action to enforce the terms of a consent decree or contract. It makes no difference that the language is unambiguous; it makes no difference that the opposing party has produced no evidence that the literal terms were not intended by the parties; the party seeking to enforce the literal

meaning of unambiguous terms has the burden of proving that the parties meant what they said, in every case; failure to produce such extrinsic evidence as to the intent of both parties is a substantial risk.

Of course, it will be extremely difficult for one party to produce evidence as to the other party's intent.

The courts will then be required to consider this extrinsic evidence in every case, making decisions as to what the parties "intended" by what they said, even though unambiguous.

Further, when neither party introduces extrinsic evidence, the opinion below allows the courts to make this interpretation upon pure speculation as to what the opposing party alone intended. There is "...no apparent limit on the

power of the judiciary to alter the plain language of an order in light of the 'circumstances surrounding the order and the context in which the parties were operating.'" ITT Continental, 420 U.S. at 249.

This new rule poses serious difficulties for the enforcement of all existing and all future consent decrees. Alleged violators will seek to narrow and thereby evade the plain meaning of unambiguous language. Those who have not violated agreements will be encouraged to do so when unsatisfied with their agreements, no matter how unambiguous, because the other party will have the burden of proving that the parties actually meant what they said.

Finally, the opinion below threatens to retard significantly the effective use of consent decrees, because of the increas-

ed difficulty and uncertainty in enforcement of settlement agreements.

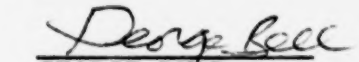
It is therefore important that the Supreme Court decision in ITT Continental be clarified. It needs to be made clear that the "four corners" rule is still valid in the enforcement of consent decrees and all other contracts. It needs to be made clear that resort to extrinsic aids is permissible only if the language is found to be ambiguous, and that it is impermissible to disregard the plain meaning of unambiguous language.

If the Seventh Circuit's expansion of ITT Continental is allowed to stand, significant and recurring problems will result in the enforcement of all consent decrees and all contracts.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Seventh Circuit.

Respectfully
submitted,



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February 7, 1983

In the
UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 81-2971
LEON WHITE, et al.,

Plaintiffs-Appellants,

v.

C. VAUGHN ROUGHTON, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Illinois, Danville Division.
No. 74 C 165 - Harold A. Baker, Judge.

ARGUED June 14, 1982
DECIDED September 9, 1982

Before ESCHBACH, POSNER, and COFFEY, Circuit Judges.

POSNER, Circuit Judge. The township of Champaign, Illinois has a program called "General Assistance" by which it provides money to poor people out of its tax revenues. This appeal arises out of a

class action that was brought under 42 U.S.C § 1983 against officials of the township on behalf of recipients of and applicants for General Assistance, alleging that the township's failure to promulgate written standards of eligibility, and to give applicants whose applications are denied reasons for denial, violated the rights of the class members under the due process clause of the Fourteenth Amendment. The complaint sought both injunctive relief and back payment of benefits.

The district judge denied a preliminary injunction and the plaintiffs appealed to this court, which reversed, holding that the plaintiffs were likely to prevail at trial. See White v. Roughton, 530 F.2d 750 (7th Cir. 1976). The parties then negotiated a consent decree which was approved by the judge. The decree does

not require the payment of any benefits retroactively but it does require the township to give applicants for General Assistance written notice of, and reasons for, denial of any application; entitles an applicant to a timely evidentiary hearing if his application is denied; and requires the township to promulgate "published, consistent standards governing eligibility." In implementation of the requirement of "published, consistent standards," paragraph 9 of the decree provides that the township, "to insure protection of these constitutional rights and to comply with Goldberg v. Kelly, [397 U.S. 254 (1970),] and White v. Roughton, supra," shall be required to administer General Assistance "including but not limited to application procedures, eligibility requirements, appeal procedures,

and amounts and categories of assistance in accordance with the public written standards adopted by the [township]; *the standards shall from this day forward be substantially in compliance with the standards adopted pursuant to this settlement and attached hereto as Exhibit 2.*" (Emphasis added.) Exhibit 2 includes a provision which is captioned "Emergency Assistance" and which reads in pertinent part: "Emergency assistance for basic maintenance shall be provided when necessary for an applicant's or recipient's health and well-being."

More than four years after the decree was entered the township's board of trustees repealed the ordinance under which Emergency Assistance is provided. The plaintiffs, claiming that this repeal was contrary to the clause in the decree

that we have italicized, petitioned the district court for an order holding the township and its officers in civil contempt of the decree. The district court (a different judge from the one who had approved the decree) held that the repeal of emergency assistance did not violate the decree and dismissed the petition, and the plaintiffs have appealed. The dismissal of the contempt petition was a final order, appealable to this court under 28 U.S.C. §1291, and the appeal properly brings up to us the question of the meaning of the consent decree. See, e.g., Sportmart, Inc. v. Wolverine World Wide, Inc., 601 F.2d 313, 315-16 (7th Cir. 1979).

It is quite true, as the plaintiffs argue, that the italicized clause, standing alone, requires the township to

adhere, at least substantially, to the standards set forth in the exhibit to the decree, and that the repeal of emergency assistance is not substantial complaince. But it is not true that we must read one clause in one paragraph of the decree in isolation from the rest of the paragraph and the rest of the decree without reference to the decree's evident purpose. We accept unreservedly the statement in United States v. Armour & Co., 402 U.S. 673, 681-82 (1971) (emphasis in original), that a consent "decree itself cannot be said to have a purpose; rather the parties have purposes, generally opposed to each other, and the resultant decree embodies as much of those opposing purposes as the respective parties have the bargaining power and skill to achieve. For these reasons, the scope of a consent decree

must be discerned within four corners, and not by reference to what might satisfy the purposes of one of the parties to it." But this language must be read in context --the context of a government antitrust decree that the government was asking the court to interpret in accordance with the purpose that had moved the government to bring the suit that the decree had settled. We do not understand the Supreme Court to be saying that consent decrees should be interpreted as if their provisions were unmotivated, purposeless, and without context or that the "four corners" of the decree are really the "four corners" of each clause in the decree. The Court was saying that the relevant purposes in interpreting a consent decree (like any other contract) are the purposes embodied in the instrument rather than the

maximum aspirations--which are bound to be inconsistent anyway--of the interested parties.

Any doubts about this interpretation of Armour should have been dispelled by United States v. ITT Continental Baking Co., 420 U.S. 223, 238 (1975), which states that "a consent decree or order is to be construed for enforcement purposes basically as a contract," so that "reliance upon certain aids to construction is proper, as with any other contract." (The suggestion by the dissenting Justices in ITT Continental that the majority opinion departs from the standard of Armour, see 420 U.S. at 247-48, overlooks, it seems to us, the difference between giving effect to the purpose of just one of the parties to the consent decree and giving effect to the parties' joint purpose imprecisely

embodied in the language of the decree.) See also this circuit's decisions in Sportmart, Inc. v. Wolverine World Wide, Inc., supra, 601 F.2d at 316-17, and Commodities Futures Trading Comm'n v. Premex, 655 F.2d 779, 782 (7th Cir. 1981).

Nor do we agree with the plaintiffs that interpretation is permissible only if the language of the decree is ambiguous. Sportmart does not support that proposition. We said there that "the ambiguity of the decree's application to the present case is plain and resort to the circumstances surrounding the formation of the consent decree in order to construe its terms, if ambiguity be necessary at all before resort to such extrinsic aid, is proper." 601 F.2d at 317 (emphasis added). This formulation leaves open for another day--this day--the question whether it is

permissible to construe unambiguous language where construction is necessary to determine the intended rather than the literal meaning of the decree. The proposition advanced by the plaintiffs would be correct if we were construing a common carrier's tariff rather than a decree in the nature of a contract. See Western Transport, Co. v. Wilson & Co., No. 82-1053, slip op. at 5 (7th Cir. July 12, 1982). But the overriding purpose in construing a contract is to give effect to the mutual intent of the parties at the time the contract was made; and while the language of the contract is normally the best evidence of that intent, a court can properly disregard even unambiguous language when it is convinced that the parties meant something different from what they said. "The purposes of the

parties to a contract are not always identical;...the parties often have divergent or even conflicting interests. But up to a point they commonly join in a common purpose of attaining a specific factual or legal result which each regards as necessary to the attainment of his ultimate purposes...Determination that the parties have a principal purpose in common requires interpretation, but if such a purpose is disclosed further interpretation is guided by it. Even language which is otherwise explicit may be read with a modification needed to make it consistent with such a purpose." 2 Restatement (Second) of Contracts §202, comment c (1981) (emphasis added); see also 2 id. §212, comment b.

The plaintiffs' further argument that "no words [in a consent decree] should be

rejected for lack of meaning or surplusage" rests on the unrealistic premise that all legal instruments are drafted with complete economy of language. The people who draft contracts and consent decrees are fallible like the rest of us and often fail to express their agreement with precision. They take a terrible risk when they do this, but if a court can figure out what they meant but failed to say, it has the power and the duty to give effect not to the words but to the intentions behind them--always supposing that these are the joint intentions of the parties at the time the contract was made or the decree formulated and not just the secret intention of one of the parties. There is "useless surplusage" in contracts as in statutes, J.C. Penny Co. v. Commissioner of Internal Revenue, 312 F.2d 65, 72 (2d

Cir. 1962), and in neither context should a court give effect to it.

We have said that the italicized clause in paragraph 9, read literally, requires the township to adhere to the published standards attached to the decree and we understand how delighted the plaintiffs would have been to have gotten such a duty into the decree. But we do not believe that the parties meant to include it. The only issue in the class suit was the township's adherence to proper procedures. The plaintiffs did not and could not claim a federal right to receive emergency assistance or any other form of poor relief from the township, see Dandridge v. Williams, 397 U.S. 471 485 (1970); and we doubt the township was so inept a bargainer that it gave the plaintiffs not only all the procedures they

wanted but also substantive entitlements to which they had no possible claim. Paragraph 9 leads off with the statement that the requirements set forth in the paragraph are in order "to insure protection" of the constitutional rights listed earlier in the decree, all of which are procedural rights, and "to comply with" the Goldberg decision and this court's earlier decision in this litigation. Both of those decisions concerned procedural rather than substantive rights. Moreover, paragraph 9 does not even appear in the order portion of the decree, but in the conclusions of law that precede the actual order. The order states, so far as is pertinent to the issue in this case, that the township is "permanently enjoined from failing to apply consistent written standards for eligibility and the amount

of assistance to be given to [the plaintiffs]. A copy of the standards adopted by [the township] pursuant to this settlement is attached hereto as Consent Decree Exhibit 2 and incorporated herein by reference." We do no violence to the meaning of these words by interpreting them as imposing on the township the obligation, not to adhere to the standards in Exhibit 2, but to apply "consistent written standards" of which the standards in Exhibit 2 are merely an illustration.

Although the plaintiffs argue that they gave up their claim to retroactive payment of benefits in exchange for substantive welfare rights, there is not a hint of such a swap in the decree. On the contrary, the notice of the proposed settlement of the class action, prepared by the plaintiffs' counsel, states that

the township has "offered agreement to the entry of a permanent injunction and declaratory judgment requiring them to adopt and implement certain standards and procedures for administering general assistance, in return for Plaintiffs' waiver of all claims for retroactive benefits." These words suggest that it is the decree as a whole, not the freezing of welfare benefits at existing levels, that was the consideration for the plaintiffs' giving up their claims for retroactive benefits.

We doubt, moreover, that the township would have agreed to specific substantive entitlements without insisting that the decree contain a more flexible machinery for modification than is implied by the traditional principle--which the plaintiffs quote in their brief with seeming

relish--that "nothing less than a clear showing of grievous wrong evoked by new and unforseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned." United States v. Swift & Co., 286 U.S. 106, 119 (1932). Because a local township has only a limited ability to tax, commitment to a fixed level of benefits paid out of its tax revenues for the indefinite future could seriously imperil its fiscal health. Yet if paragraph 9 is read literally, the township made just such an improvident commitment.

It is pretty clear to us that paragraph 9 was just ineptly drafted and that what the parties meant to say was that the township would have to adhere in the future to written standards such as those in the exhibit, attached by way of example

rather than mandate--not that it was committing itself forever to provide specific types or levels of poor relief. At least that must be our conclusion when the only evidence offered in the contempt proceeding by either party was the decree itself. The plaintiffs had the burden of proving that the defendants had violated the decree, yet they made no effort to introduce extrinsic evidence that might have supported a construction of the decree that seems, in the absence of any such evidence, unreasonable in light of the context and apparent purpose of the language they rely on.

We conclude that the township did not violate the consent decree by abandoning emergency assistance. The judgment of the district court refusing to hold the

defendants in contempt of the decree is therefore

AFFIRMED.

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ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

No. 82-1353

LEON WHITE, et al., Petitioners,

v.

C. VAUGHN ROUGHTON, et al.,
Respondents.

SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

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UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

November 9, 1982

Before

Hon. Jesse E. Eschbach, Circuit Judge

Hon. Richard A. Posner, Circuit Judge

Hon. John L. Coffey, Circuit Judge

LEON WHITE, et al., Plaintiffs-Appellants,	)
	)Appeal from the
	)United States
	)District Court
No. 81-2971	)for the Eastern
	)District of
vs.	)Illinois, Dan-
	)ville, Division.
C. VAUGHN ROUGHTON, Defendants-Appellees.	)No. 74 C 165
	)Harold A. Baker,
	)Judge.

ORDER

On September 23, 1982, Leon White, et al., filed a petition for rehearing with suggestion for rehearing en banc. All of the judges of the original panel have voted to deny the petition, and none of the active members of the court has requested a vote on the petition. The petition is therefore DENIED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

LEON WHITE, et al., Individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	No. 74-165-D
WILLIAM RICE, successor to C. VAUGHN ROUGHTON, Township Supervisor of the City of Champaign Township, Champaign, Illinois, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION

This matter is before the court on the petition of the plaintiffs for a rule to show cause, and the responses thereto, why the defendants should not be adjudged in contempt and for a contempt judgment.

The plaintiffs are a class of persons who have been, now are, or will be in the future, applicants for or recipients of general assistance benefits or medical assistance benefits from the town of the City of Champaign Township.

The defendant, William Rice, is the successor in office to C. Vaughn Roughton, Supervisor of the town of the city of Champaign Township. The defendant, acting under color of state law, particularly the Illinois Public Aid Code, is responsible in his official capacity for the acts complained of herein. The court has jurisdiction under the provisions of 28 U.S.C. §1343(3) and (4).

On June 8, 1976, this court entered a Consent Decree which provided in pertinent part that:

> 6. The Plaintiff-Applicants have from this day forward a federal

constitutional right under the Fourteenth Amendment to:

a) written notice detailing the specific reasons why the application is being denied and setting four (sic) the Plaintiff-Applicants' right to appeal;

b) a timely evidentiary hearing, as prescribed by Goldberg v. Kelly, supra, after the denial of their application or termination of their assistance.

7. Both Plaintiff-Recipients and Plaintiff-Applicants have from this day forward a federal constitutional right under the Fourteenth Amendment to defendant Roughton using published, consistent standards governing eligibility and the amount of assistance given as provided by White v. Roughton, _____F.2d _____ (7th Cir., decided Feb. 27, 1976).

8. To insure the aforesaid federal constitutional rights will be protected, and based on the Stipulation and Findings of Facts herein, a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure shall issue directing Defendant Roughton to forthwith bring the township general assistance program into compliance with Plaintiff-Recipients'

and Plaintiff-Applicants' federal constitutional rights to due process of law, as specifically listed above.

9. To insure protection of these constitutional rights and to comply with Goldberg v. Kelly, supra and White v. Roughton, supra, it is necessary that Defendant Roughton be required from this day forward to administer general assistance in the Town of the City of Champaign, including but not limited to application procedures, eligibility requirements, appeal procedures, and amounts and categories of assistance in accordance with the public written standards adopted by the Town of the City of Champaign; the standards shall from this day forward be substantially in compliance with the standards adopted pursuant to this settlement and attached hereto as Exhibit 2.

10. Plaintiff-Recipients and Plaintiff-Applicants are entitled to declaratory relief as herein above set out in recognition of their federal constitutional rights to procedural due process from Defendant Roughton, et al.

The court then went on to order relief in accordance with its conclusions

of law. The particular relief ordered which is germane in these proceedings is in paragraph 2 of the order. It states:

> 2. Defendant Roughton, et al. are permanently enjoined from failing to apply consistent written standards for eligibility and the amount of assistance to be given to Plaintiff-Recipients and Plaintiff-Applicants. A copy of the standards adopted by Defendant Roughton, et al. pursuant to this settlement is attached hereto as Consent Decree Exhibit 2 and incorporated herein by reference.

The germane portion of Exhibit 2 provides:

> 2-4 Emergency Assistance
>
> Emergency assistance for basic maintenance shall be provided when necessary for an applicant's or recipient's health and well-being. Such emergency assistance shall include but is not limited to vouchers for purchase of food or vouchers for purchase of foodstamps for persons who are without food and without means to obtain food. The provision of emergency assistance does not constitute a final determination of eligibility for continued

assistance. Further, eligibility for such emergency assistance shall not be conditioned on eligibility for continued assistance, but shall be tested on the basis of the applicant's immediate needs for health and well-being.

On February 10, 1981 at a regularly scheduled meeting of the Board of Town Trustees of the town of the City of Champaign Township, Illinois, Resolution 81-1, was adopted. The Resolution repealed Section 2-4 of the Township Standards for General Assistance and it is from that action that the plaintiffs seek relief.

The plaintiffs assert that the repeal of Section 2-4 of the Township Standards for General Assistance without consent of the court or the plaintiffs is a violation of the Consent Decree of June 8, 1976. Plaintiffs' Petition for a Rule to Show Cause was filed October 26, 1981, and was heard October 28, 1981. A rule on the

defendants to show cause why they should not be held in contempt was issued on October 28, 1981, returnable on November 5, 1981. At the hearing on the rule, the rule was discharged and an order entered denying plaintiffs any relief and sending the defendants hence without day.

The question before the court is did the provisions of the Consent Decree of June 8, 1976 prohibit repeal of Section 2-4 of the Standards for General Assistance without prior approval by the court or consent of the plaintiffs. I hold it did not.

The plain meaning of the language of the Consent Decree taken in the context of the litigation is that the plaintiffs were entitled to Fourteenth Amendment procedural due process rights which required the defendants to apply consistent written

standards for eligibility and the amount of assistance to be given to the plaintiffs. The Decree also required the defendants to post the township guidelines for eligibility, amount of aid to be given, and hearing and appeal procedures in a conspicuous location in the offices of the township. The Decree in no manner purported to direct who should be eligible for assistance or that assistance should be rendered at all. Those were legislative decisions. The Decree ordered due process in the form of notice of eligibility requirements and amounts of aid and by requiring written statements for refusing aid and provision for appeal procedures from the decision of the township supervisor.

As pointed out in United States v. Armour & Co., 402 U.S. 673, 682 (1971).

> ...The scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it. Because the defendant has, by the decree, waived his right to litigate the issues raised, a right guaranteed to him by the due process clause, the conditions upon which he has given that waiver must be respected, and the instrument must be construed as it is written, and not as it might have been written had the plaintiff established his factual claims and legal theories in litigation.

To adopt the interpretation of the Decree urged by the plaintiffs would require this court to enter into the process of deciding who is entitled to general assistance and in what amount that entitlement exists. The intent of the Decree was obviously not to deprive the defendants of their legislative function, but to insure that in carrying out the administrative aspects of their official duties they did so with due process of law.

Accordingly, the Rule to Show Cause against the defendants should be discharged and the defendants go hence without day, the plaintiffs to take nothing by their petition.

SO ORDERED.

ENTERED this 18th day of Dec. 1981.

Harold A. Baker
United States District
Judge

PROOF OF SERVICE

I certify that a true copy of the foregoing Supplemental Appendix for White v. Roughton was deposited in a U.S. Mailbox in /Champaign, Illinois, on February 18, 1983, in a sealed envelope, with the proper postage fully prepaid, addressed to: Gregory E. Pelini, Attorney for Respondents, P.O. Box 97, Urbana, Illinois 61801.

Teresia Pelmere

Signed and sworn to before me this 18th day of February, 1983.

Maryan Staske
Notary Public

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No. 82-1353

In The

Supreme Court of the United States

October Term, 1982

LEON WHITE, *et al.*,

Petitioners,

vs.

C. VAUGHN ROUGHTON, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari
to the United States Court of Appeals for the
Seventh Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

May interpretive aids be utilized in interpreting language in a consent decree?

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No. 82-1353

In The

Supreme Court of the United States

October Term, 1982

LEON WHITE, *et al.*,

Petitioners,

vs.

C. VAUGHN ROUGHTON, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

The Respondents, William H. Rice[1] and the Town of the City of Champaign Township,[2] oppose the Petition of

[1]William H. Rice is the successor to C. Vaughn Roughton as the Supervisor of the Town of the City of Champaign Township. No motion was made to substitute him as a party defendant; however, no contention has been made that he is not subject in his official capacity to the Consent Decree entered by the District Court for the Eastern District of Illinois on June 8, 1976. *White, et al. v. Roughton, et al.*, No. 74-165D (E. D. Ill. June 8, 1976) [hereinafter referred to as the "Consent Decree"]; (R. A. 8-12).

[2]Hereinafter collectively referred to as the "Respondents".

Leon White, Elester Walker and Beatrice Silagy[3] for a writ of certiorari to review the opinion and judgment of the Court of Appeals for the Seventh Circuit entered in this cause on September 9, 1982.[4]

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit,[5] reported at 689 F. 2d 118, and the unpublished opinion of the District Court for the Central District of Illinois[6] are adequately set forth in the Appendix to the Petition and the Supplemental Appendix filed by the Petitioners.[7]

Inasmuch as the Petitioners failed to include in their Petition or Supplemental Appendix the Consent Decree in its entirety, it is appended hereto.[8]

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[3]Hereinafter collectively referred to as the "Petitioners". Leon White, Elester Walker and Beatrice Silagy were found in the Consent Decree to be proper representatives of all persons who had been since March 23, 1970, or are or would be applicants for or recipients of general assistance benefits from the Township (R. A. 3-5).

[4]The Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit will hereinafter be referred to and cited to as the "Petition".

[5]Hereinafter referred to as the "Court of Appeals".

[6]Hereinafter referred to as the "District Court".

[7]References to pages in the Appendix and the Supplemental Appendix will hereinafter be cited respectively as "(A. ....)" and "(S. A. ....)".

[8]References to pages in the Respondents' Appendix will herein be cited as "(R. A. ....)".

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

LEGAL PROVISIONS INVOLVED

As noted in the Petition, no constitutional provisions, treaties, statutes, ordinances or regulations are involved. This cause solely concerns the permissible latitude in interpreting language in a consent decree.

COUNTERSTATEMENT OF THE CASE

A. History of the Case

The Statement of the Case adequately sets forth the history of the case.

B. The Consent Decree and Standards

The Respondents take exception to the selective, slanted review of the Consent Decree contained in the Petition.

To begin with, the Petitioners state that "the parties had negotiated a specific set of written standards,"[9] suggesting, of course, that all of the provisions contained in

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[9]Petition, at 6.

the general assistance standards appended to and incorporated into the Consent Decree were specifically bartered for in a collective bargaining scenario.[10] There is no support in the record for that assertion; moreover, it is implicitly contradicted by the finding of the Court of Appeals that it was the terms of the Consent Decree which were negotiated. *White, et al. v. Roughton, et al.*, 689 F. 2d 118, 118 (7th Cir. 1982); (A. 2).

The Petitioners also mention that the "negotiated" general assistance standards were incorporated into the Consent Decree "in the same paragraph which permanently enjoined the respondents from failing to apply written standards,"[11] They fail to observe, however, as specifically noted by the Court of Appeals,[12] that this same paragraph commences with a preface clarifying "that the requirements set forth in [this] paragraph are in order 'to insure protection' of the constitutional rights listed earlier in the decree, all of which are procedural rights." 689 F. 2d at 121; (A. 14).[13]

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[10]This circumstance would, of course, lend greater weight to their position that none of the general assistance standards could be modified or repealed without their prior consent or court approval.

[11]Petition, at 6.

[12]689 F. 2d at 118-119; (A. 2-3).

[13]The procedural rights enumerated earlier in the Consent Decree were the right to the Respondents using published, consistent, written standards governing eligibility and the amounts of assistance offered, the right to written notice detailing specific reasons why an application was being denied and setting forth the right to appeal, the right to adequate notice of termination of benefits, the right to an evidentiary appeal hearing after denial of an application or termination of benefits, and the right to continued assistance pending an ap-

(Continued on next page)

Finally, the Petitioners assert that in consideration of the Respondents' agreement to the provisions of the Consent Decree (encompassing also, apparently, the general assistance standards incorporated into the Consent Decree) and, in particular, the injunctive relief, the Petitioners "waived their claims for retroactive benefits."[14] Apparently, this assertion is intended to supplement the prior suggestion that each and every one of the provisions of the general assistance standards appended to and incorporated into the Consent Decree had been specifically bargained for and to indicate that the Petitioners had relinquished constitutional rights in exchange for the specific, substantive provisions of those standards. Again, nothing in the record supports that assertion and it conflicts with the express finding by the Court of Appeals that no such bargain was apparent. 689 F. 2d at 121; (A. 15-16).

C. The Unilateral Repeal of a Provision

The Statement of the Case adequately sets forth the circumstances surrounding repeal of the "Emergency Assistance" provision of the general assistance standards incorporated into the Consent Decree; however, the Respondents do object to the Petitioners' use of the epithet "unilateral". Its use is undoubtedly intended to stigmatize the

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peal hearing if an appeal was taken within a certain number of days from the determination to terminate benefits. (R. A. 6-7).

In addition, this paragraph specifically cited, as had the earlier recitations of such procedural rights, *Goldberg v. Kelly*, 397 U. S. 254 (1970) and *White v. Roughton*, 530 F. 2d 750 (7th Cir. 1976) as authority for such rights. Both of these cases dealt solely with procedural rights.

[14]Petition, at 7.

actions of the Respondents inasmuch as it is otherwise meaningless in this context. After all, the paramount consideration in the contempt proceeding was whether the handiwork of the Respondents violated the prohibitions of the Consent Decree; if it did not, it was of no consequence that they acted alone; if it did, a host of confederates would avail them not.

D. The Contempt Proceeding

The Respondents also take exception to the Petitioners' synopsis of the decisions of the District Court and the Court of Appeals.

The question before the District Court was whether the provisions of the Consent Decree prohibited the repeal without prior approval by the court or the consent of the Petitioners of the substantive "Emergency Assistance" provision contained in the general assistance standards incorporated into the Consent Decree. (S. A. 9). Viewing the Consent Decree as a whole, the District Court held that they did not:

> The plain meaning of the language of the Consent Decree taken in the context of the litigation is that the plaintiffs were entitled to Fourteenth Amendment procedural due process rights which required the defendants to apply consistent written standards for eligibility and the amount of assistance to be given to the plaintiffs. The Decree also required the defendants to post the township guidelines for eligibility, amount of aid to be given, and hearing and appeal procedures in a conspicuous location in the offices of the township. The Decree in no manner purported to direct who should be eligible for assistance or that assistance should be rendered at all. Those were legislative decisions. The Decree ordered due process in the form of

> notice of eligibility requirements and amounts of aid and by requiring written statements for refusing aid and provision for appeal procedures from the decision of the township supervisor.
>
> . . .
>
> To adopt the interpretation of the Decree urged by the plaintiffs would require this court to enter into the process of deciding who is entitled to general assistance and in what amount that entitlement exists. The intent of the Decree was obviously not to deprive the defendants of their legislative function, but to insure that in carrying out the administrative aspects of their official duties they did so with due process of law.

White, et al. v. Roughton, et al., No. 74-165D, slip opinion at 3-4 (C. D. Ill. Dec. 18, 1982); (S. A. 9-10, 11).

Although prefacing with an additional threshold determination, the Court of Appeals took a similar tack.[15] Focusing upon the enunciation in the Consent Decree that "the standards shall from this day forward be substantially in compliance with the standards adopted pursuant to this settlement" (R. A. 7), the Court of Appeals reasoned at the outset that such directive, viewed literally and standing alone, unambiguously prohibited the repeal of the "Emergency Assistance" provision. 689 F. 2d at 119; (A. 5-6, 13).[16]

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[15]Inasmuch as the underlying question before the Court of Appeals was one of contractual interpretation, and thus, purely a question of law, it was not bound by the clearly erroneous standard of review embodied in Rule 52(a) of the Federal Rules of Civil Procedure but could consider the question anew. *See, e. g., Eaton v. Courtaulds of North America, Inc.*, 578 F. 2d 87 (5th Cir. 1978); C. Wright & A. Miller, *Federal Practice & Procedure: Civil* § 2588.

[16]It is questionable whether a court should ever indulge in such a preliminary interpretation of consent decree language

(Continued on next page)

> But it is not true that we must read one clause in one paragraph of the decree in isolation from the rest of the paragraph and the rest of the decree without reference to the decree's evident purpose. We accept unreservedly the statement in *United States v. Armour & Co.*, . . . that a consent "*decree* itself cannot be said to have a purpose; rather the *parties* have purposes, generally opposed to each other, and the resultant decree embodies as much of those opposing purposes as the respective parties have the bargaining power and skill to achieve. For these reasons, the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it." But this language must be read in context—the context of a government antitrust decree that the government was asking the court to interpret in accordance with the purpose that had moved the government to bring the suit that the decree had settled. We do not understand the Supreme Court to be saying that consent decrees should be interpreted as if their provisions were unmotivated, purposeless, and without context or that the "four corners" of the decree are really the "four corners" of each clause in the decree. The court was saying that the relevant purposes in interpreting a consent decree (like any other contract) are the purposes embodied in the instrument rather than the maximum aspirations—which are bound to be inconsistent anyway—of the interested parties.

689 F. 2d at 119 (emphasis in original); (A. 6-8).

(Continued from previous page)

divorced from the context of the decree as a whole. Even assuming the appropriateness of such a preliminary determination, its value or effect is not readily apparent inasmuch as such language must then of necessity be interpreted as a part of the entire consent decree. Thus, the value or effect of the threshold determination of the Court of Appeals in this instance is dubious.

The District Court, as is apparent from its opinion (S. A. 3-12), made no such threshold determination, but rather interpreted the Consent Decree from the outset as a whole.

Progressing, accordingly, to a scrutiny of the Consent Decree as a whole, the circumstances surrounding its formation, and its evident purpose, the Court of Appeals concluded that the pivotal enunciation had not been intended to be read in a literal sense but rather "as imposing on the township the obligation, not to adhere to the standards [incorporated into the Consent Decree,] . . . but to apply consistent written standards of which the standards [incorporated] . . . are merely an illustration." 689 F. 2d at 121; (A. 15).[17] Consequently, it affirmed the decision of the District Court.[18]

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[17]The Petitioners have never and do not now contend that repeal of the "Emergency Assistance" provision of the standards either violated their procedural rights as set forth in the Consent Decree or the mandate that the Respondents maintain "consistent, written" standards.

[18]Contrary to the Petitioners' assertion that no "extrinsic evidence" was submitted by either party as to the meaning of the Consent Decree, the Respondents adduced before the District Court the Affidavit of Phyllis V. Moore, the Assistant Supervisor of the Township. Her Affidavit indicated that since the entry of the Consent Decree certain substantive changes had been made by the Respondents in the standards in addition to the deletion of the "Emergency Assistance" provision, including the deletion of "Aid to the Medically Indigent" and a change in the amounts of the monthly shelter and clothing allotments. She further revealed that the changes had been effected without the prior consent of the Petitioners or court approval and that the Petitioners had been aware of such changes for some time. (R. App. Document No. 57). Of course, the conduct and manifestations of parties in a contractual relationship are strong evidence of the meaning the parties have themselves given to the terms of their contract and, consequently, the meaning to which legal effect should be given. *See, e. g.,* 3 Corbin On Contracts § 558 (1960). Apparently, neither the District Court nor the Court of appeals relied upon such evidence in reaching their conclusions.

REASONS FOR DENYING THE PETITION

There are two basic reasons why certiorari should be denied. First, the utilization by the Court of Appeals of interpretive aids in interpreting the Consent Decree did not violate or deviate from the precepts dictated by prior opinions of this Court for the interpretation of language contained in consent decrees.[19] Second, the decision of the Court of Appeals is not presently in actual conflict with decisions of other courts of appeal.

A. The Court of Appeals did not violate or deviate from the precepts mandated by this Court for the interpretation of language contained in consent decrees by using aids to interpretation.

The Petitioners assert that the utilization by the Court of Appeals of interpretive aids in interpreting the language contained in the Consent Decree expands, if it does not in fact violate, the precepts announced by this Court in *United States v. ITT Continental Baking Co.*, 420 U. S. 223 (1975).[20] In addition, they contend that such expansion contravenes the "four corners" rule enunciated in *United States v. Armour & Co.*, 402 U. S. 673 (1971).[21] In essence, they appear to argue that *Armour* forbade reliance upon such aids in interpreting the language of consent decrees and that *ITT Continental* carved a slight exception to this rule limited solely to instances of ambiguous decretal language. They are wrong. An

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[19]Nor, as will become apparent, did that of the District Court.

[20]Petition, at 18. *United States v. ITT Continental Baking Co.*, 420 U. S. 223 (1975), will hereinafter be referred to as *"ITT Continental"*.

[21]Hereinafter referred to as *"Armour"*.

appreciation of their error necessitates analysis not only of *ITT Continental* but of its influential precursor, *Armour.*

In *Armour,* this Court was asked to decide whether the Meat Packers Consent Decree of 1920 which prohibited Armour & Co. from dealing directly or indirectly in certain specified retail food commodities[22] also prohibited Greyhound, two of whose wholly-owned subsidiaries dealt in some of the prohibited products, from acquiring a controlling interest in Armour & Co. The government did not vigorously contend that the literal language of the consent decree prohibited such acquisition by a third party or that Greyhound, which had not been a party to the original decree, was subject to contempt for such acquisition nor that it had acted "in active concert or participation with"[23] a party to the decree, thereby subjecting itself to the decree's strictures. Rather, it primarily contended that Greyhound should have been brought before the district court which retained jurisdiction of the cause[24] and been required to divest itself of its controlling interest in Armour & Co. because such acquisition caused Armour & Co. to be related to concerns engaged in activities prohibited by the decree, thereby circumventing one of the

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[22]Paragraph Fourth of the decree enjoined Armour & Co. and the other corporate defendants from "either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise . . . the manufacturing, jobbing, selling . . . distributing or otherwise dealing in" the prohibited commodities. 402 U. S. at 676.

[23]Fed. R. Civ. P. 65(d).

[24]In so arguing the government relied upon § 5 of the Sherman Act, 15 U. S. C. § 5 (1976), which permits the courts in actions pending under the Sherman Act to summon other parties before the court when the interests of justice so require.

decree's basic purposes—the complete structural separation of the meatpacking and the retail food industries—and permitting the same anticompetitive evils that the original antitrust lawsuit was brought to prevent. 402 U. S. at 677. In announcing its decision, this Court first observed, as tacitly conceded by the government, that the literal terms of the consent decree could not be interpreted so as to support the government's proposed construction. 402 U. S. at 673-680. Turning to the government's contention that notwithstanding the literal language of the consent decree such a prohibition should be read into it to better effectuate the anticompetitive purposes behind the litigation, this Court noted that while such an argument would be persuasive if made to a court formulating original relief or modifying the decree, it availed nothing in construing the existing consent decree:

> Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. The parties waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation. Thus, the *decree* itself cannot be said to have a purpose; rather the *parties* have purposes, generally opposed to each other, and the resultant decree embodies as much of those opposing purposes as the respective parties have the bargaining power and skill to achieve. (Footnote omitted.) For these reasons, the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it. Because the defendant has, by the decree, waived his right to litigate the issues raised, a right guaranteed to him by the Due Process Clause,

> the conditions upon which he has given that waiver must be respected, and the instrument must be construed as it is written, and not as it might have been written had the plaintiff established his factual claims and legal theories in litigation.

402 U. S. at 681-682. (emphasis in original).

Properly viewed, *Armour* involved not the interpretation of consent decree language, but rather the construction of the permissible scope of consent decree prohibitions.[25] In holding that in such an inquiry the purposes of the parties to litigation would not be considered and that the prohibitions contained in a consent decree would be construed solely with reference to the language within the "four corners" of the decree, this Court was simply adhering to established precedent dictating that in enforcement proceedings the scope of "a decree will not be expanded by implication or intendment beyond the meaning of its terms when read in the light of the issues . . . and the facts found must constitute a plain violation of the decree so read." *Terminal Railroad Association v. United States*, 266 U. S. 17, 29 (1924).[26] By contrast, *ITT Continental* did involve the interpretation of decretal language.

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[25]This distinction is critical. "By 'interpretation of language' we determine what ideas that language induces in other persons. By 'construction of the contract' . . . we determine its legal operation . . . If we make this distinction, then the construction of a contract starts with the interpretation of its language but does not end with it; while the process of interpretation stops wholly short of a determination of the legal relations of the parties (Footnote omitted.)." 3 Corbin On Contracts § 534 (1960).

[26]*Terminal Railroad Ass'n.* did make reference to consideration of the purposes for the lawsuit in determining the scope of a consent decree. 266 U. S. at 29. Such an inquiry is inconsistent with and has been foreclosed by *Armour*.

In *ITT Continental*, this Court was asked to decide whether violations of a Federal Trade Commission consent order prohibiting the "acquiring" of other companies constituted non-recurring infractions resulting in solitary fines or a "continuing failure or neglect to obey" authorizing imposition of daily penalties.[27] In 1960 the Federal Trade Commission sued Continental Bakery Co.,[28] a major producer of bread and other bakery products, alleging that it had by means of various acquisitions violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.[29] In May of 1962 a consent order was entered prohibiting Continental Bakery Co. from acquiring the stock, share capital or assets of any company engaged in the production and sale of bread and bread-type rolls.[30] In 1971 the government initiated contempt

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[27]The statutory provisions involved were 15 U. S. C. §§ 21 (l), 45(l) (1976).

[28]In 1968 Continental Bakery Co. merged with ITT Continental Baking Company. ITT Continental never contested its liability under the merger agreement for any violations of the consent order committed by Continental prior to the merger. 420 U. S. at 227 n. 3.

[29]Section 7 of the Clayton Act, 15 U. S. C § 18 (1976), prohibits the acquisition by a corporation engaged in commerce of the stock or assets of another corporation engaged in commerce where the effect may be to substantially lessen competition or create a monopoly in any line of commerce in any section of the country. Section 5 of the Federal Trade Commission Act, 15 U. S. C. § 45 (1976), prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.

[30]The order specifically enjoined Continental from, *inter alia*, "acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern, corporate or non-corporate, engaged in any state in the United States in the production and sale of bread and bread-type rolls unless the Commission, on petition for modification of this Section III of this order, permits such an acquisition. . . ." 420 U. S. at 228.

proceedings alleging that Continental Bakery Co. had acquired assets in three companies in violation of the consent order and requested daily penalties for the continuing retention of such assets. The district court held that two of the three transactions were violations but declined to assess daily penalties, concluding that, as voiced by ITT Continental, by use of the term "acquiring" only the initial act of acquisition was prohibited and that retention of the assets did not constitute a "continuing failure or neglect to obey" justifying the imposition of such penalties. 1972 CCH Trade Cases ¶ 73,993, p. 92,127 (Aug. 2, 1971). The Court of Appeals held that all of the transactions constituted violations but likewise refused to assess daily penalties for the same rationale. 485 F. 2d 16 (1973). The government urged on appeal that by the term "acquiring" the parties meant to include both the purchase and the retention of assets. This Court concluded that the language of the consent order "as it is written" could "fairly be read" to support the government's interpretation that "the act of acquisition continues until the assets acquired are disgorged". 420 U. S. at 238. In reaching such conclusion, this Court did not rely solely upon the explicit and, on its face and as part of the consent decree as a whole, apparently "unambiguous" meaning of "acquiring":

> Since a consent decree or order is to be construed for enforcement purposes basically as a contract, reliance upon certain aids to construction is proper, as with any other contract. Such aids include the circumstances surrounding the formation of the consent order, any technical meaning words used may have had to the parties, and any other documents expressly incorporated in the decree. (Footnote omitted.) Such

> reliance does not in any way depart from the "four corners" rule of *Armour*.[31]

420 U. S. at 238.

By so holding, this Court simply adopted the view of leading authorities that interpretive aids may always be used to interpret contractual language:

> All through the history of the common law . . . there is found a very common assumption of the existence of antecedent rules and principles, beginning no man knows when, coming from no man knows where, seemingly universal and unchangeable. . . . Nowhere is the truth of this more obvious than in the immense quantity of juristic writing about the rules of interpretation and the admissibility of evidence to aid in interpretation. . . . Among such rules are those indicating that words must have one, and only one, true and correct meaning, that this meaning must be sought only by pouring over the words within the four corners of the paper, that extrinsic evidence of intention will not be heard, or that evidence of surrounding circumstances will be admissible only in cases of latent ambiguity. (Footnote omitted.)
>
> In view of all this, it can hardly be insisted on too often or too vigorously that language at its best is always a defective and uncertain instrument, that words do not define themselves, that terms and sentences in a contract . . . do not apply themselves to external objects and performances, that the meaning of such terms and sentences consists of the ideas that they induce in the mind of some individual person who uses or hears or reads them, and that seldom in a litigated case do the words of a contract convey one

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[31]Which is, as has been noted, correct. To arrive at its decision this Court utilized three such interpretive aids: the consideration of the circumstances surrounding the consent order and the context in which the parties were operating, the specialized meaning of "acquiring" in an antitrust context and reference to those documents incorporated into the consent order. 420 U. S. at 238-243.

> identical meaning to the two contracting parties or to third persons. Therefore, it is invariably necessary, before a court can give any meaning to the words of a contract and can select one meaning rather than other possible ones as the basis for the determination of rights and other legal effects, that extrinsic evidence shall be heard to make the court aware of the "surrounding circumstances," including the persons, objects and events to which the words can be applied and which caused the words to be used. (Footnote omitted.)

3 Corbin On Contracts § 536 (1960).[32]

It is apparent from the foregoing that the Petitioners are incorrect in asserting that the Court of Appeals violated the precepts announced in *ITT Continental* by using interpretive aids to interpret the language contained in the Consent Decree. It was just such utilization that *ITT Continental* countenanced.[33] Nor were the specific aids actually utilized by the Court of Appeals other than those envisioned by this Court in *ITT Continental* for those employed in both instances (reading the decree and incorporated documents as a whole, consideration of the circumstances surrounding the decree and the context in

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[32]*See also* 2 Williston On Contracts § 618 (1920) ("the circumstances under which a writing was made may always be shown. . . . [T]he importance of this rule and the fact that it is sometimes supposed to be applicable only in the case of an ambiguous writing [necessitates further discussion]."); 3 Corbin On Contracts § 535 (1960); 2 Restatement (Second) Of Contracts § 202(1) (1981) ("the words and other conduct are interpreted in the light of all the circumstances, ..."); 2 Restatement (Second) Of Contracts § 212 comment b (1981).

[33]As previously noted, this was acknowledged by the dissenters in *ITT Continental*, "Now, otherwise unambiguous terms of a consent decree may be construed in light of such considerations as the antecedent complaint, the 'meaning' of antitrust decisions, and the policies said to underlie the statutory provision for daily penalties". 420 U. S. at 248-249.

which the parties were operating, and ascertaining the purpose of the decree) are identical.[34]

Nor, plainly, does the assertion that the Court of Appeals' consideration of the purposes embodied in the Consent Decree violated the precepts of *Armour* bear close scrutiny. As previously noted, the "four corners" rule of *Armour* applies solely to the construction of the scope of consent decrees, not the interpretation of language contained in them.[35] But even assuming, *arguendo*, that this alleged prohibition was applicable to the interpretation of language and nonetheless somehow survived *ITT Continental*,[36] it is clear that no such sweeping prohibition as the Petitioners' claim ever existed. What *Armour* prohibited was an inquiry into and utilization of the purposes of the parties,[37] not an examination of the purposes em-

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[34]Moreover, they are interpretive aids which have traditionally been relied upon. *See, e. g.*, 3 Corbin On Contracts §§ 532-560 (1960).

[35]Which is why this Court noted in *ITT Continental* that its ruling left the "four corners" rule of *Armour* unaffected. 420 U. S. at 238.

[36]The dissenters in *ITT Continental*, who, of course, were of the opinion that *Armour* was applicable, were also of the opinion that *Armour's* prohibition could not survive *ITT Continental*. 420 U. S. at 245-250.

The Court of Appeals was also of the opinion that *Armour* was applicable but viewed *ITT Continental* as only affecting *Armour* by supporting the position that inquiry into the purposes embodied in the Consent Decree was permissible. 689 F. 2d at 119-120; (A. 8-9).

[37]"[T]he scope of a consent decree must be discerned within its four corners, *and not by reference to what might satisfy the purposes of one of the parties to it.*" 402 U. S. at 682. (Emphasis added.)

bodied in a consent decree[38]—and such permissible perusal was the sole extent of the Court of Appeals inquiry.

Suffice it to say that, for the foregoing reasons, the Court of Appeals did not violate or deviate from the precepts mandated by this Court for the interpretation of language contained in a consent decree by utilizing aids to interpretation.[39]

B. The decision of the Court of Appeals is not in actual conflict with decisions of other courts of appeal.

The Petitioners also assert that the allegedly "erroneous" interpretation placed upon *ITT Continental* by the Court of Appeals conflicts with certain decisions of other courts of appeal.[40] That is not entirely accurate. While in all candor it must be admitted that statements appearing in decisions of other courts of appeal do indeed at first glance appear to indicate a differing interpretation of *ITT Continental*, i.e., as holding that aids to interpretation may be used only when decretal language is ambiguous, such statements themselves are ambiguous and it is unclear whether the conflict is real or illusory. It is submitted that it is only illusory.

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[38]"[T]he resultant decree *embodies as much of those opposing purposes* as the respective parties have the bargaining power and skill to achieve." (footnote omitted). 402 U. S. at 681-682. (Emphasis added.) *See also* 689 F. 2d at 119, (A. 7-8).

[39]The Petitioners' also assert that the Court of Appeals simply disregarded the crucial language in the Consent Decree. Petition, at 13-14. Although certain language in the opinion might lead one to so conclude it is clear that the Court of Appeals did no such thing but rather interpreted the consent decree language in light of all of the circumstances. 689 F. 2d at 121; (A. 17-18).

[40]Petition, at 15-16.

Such is indeed the case with the germane decisions[41] cited by the Petitioners. For example, *Strouse v. J. Kinson Cook, Inc.*, 634 F. 2d 883 (5th Cir. 1981), simply chimed that "[u]nless the language is ambiguous, there can be no departure from the 'four corners' rule". 634 F. 2d at 885. To the same effect is *Roberts v. St. Regis Paper Co.*, 653 F. 2d 166, 171 (5th Cir. 1981) ("[u]nless the decree is ambiguous, we must find the meaning of the decree in its language, without resort to extrinsic considerations."). As this Court has noted, resort to interpretive aids does not contravene the "four corners" rule. *ITT Continental*, 420 U. S. at 238. No conflict is apparent there. Conversely, *United States v. American Society of Civil Engineering*, 446 F. Supp. 803 (S. D. N. Y. 1977), intoned that "[b]ecause a consent decree is to be construed in much the same manner as a contract, aids to construction may be used where its terms are ambiguous." 446 F. Supp. at 808 n. 14. Such has always been the case and was neither addressed nor affected by *ITT Continental*.

Suffice it to say that the cases relied upon by the Petitioners to indicate an actual conflict between circuits indicate no such discord.

CONCLUSION

The Court of Appeals for the Seventh Circuit properly decided this case in accordance with previous decisions of this Court. Nor is the Court of Appeals decision in actual

[41] Two cases cited by the Petitioners, *Eaton v. Courtaulds of North America, Inc.*, 578 F. 2d 87 (5th Cir. 1981) and *Cornelius v. Hogan*, 663 F. 2d 330 (1st Cir. 1981) are inapposite inasmuch as they concerned ambiguous decretal language.

conflict with any decisions of other courts of appeal. The decision should stand as rendered. The Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit should be denied.

Respectfully submitted,

WILLIAM H. RICE, successor to C. Vaughn Roughton as the Supervisor of the Town of the City of Champaign Township, and THE TOWN OF THE CITY OF CHAMPAIGN TOWNSHIP, Respondents,

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March 9, 1982

Counsel for Respondents

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

NO. 74-165D

LEON WHITE, ELESTER WALKER and BEATRICE SILAGY, Individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

C. VAUGHN ROUGHTON, Township Supervisor of the City of Champaign Township, Champaign, Illinois; CITY OF CHAMPAIGN TOWNSHIP, a governmental entity under Chapter 139, § 19 of the Illinois Revised Statutes; WESLEY M. SCHWENGEL, Chairperson of the Champaign County Board's Public Aid Committee, Champaign County, Illinois; CHAMPAIGN COUNTY PUBLIC AID COMMITTEE, a delegate committee of the Champaign County Board, Champaign County, Illinois,

Defendants.

CONSENT DECREE

I.

PRELIMINARY RECITATIONS

This is a suit on two claims for relief for declaratory and injunctive relief and retroactive benefits brought by the named Plaintiffs individually and on behalf of all persons similarly situated pursuant to Rule 23 (b) (2) of the Federal Rules of Civil Procedure seeking to declare the actions of Defendants in administering township general assistance grants as violating Plaintiffs' procedural due process rights under the Fourteenth Amendment and seek-

ing to permanently enjoin Defendants' unconstitutional actions and seeking an award of retroactive benefits.

The first claim for relief is brought by persons who are or were or will be receiving general assistance benefits from the Town of the City of Champaign, Illinois. Plaintiffs contend that Defendant C. Vaughn Roughton (hereinafter Defendant Roughton), as supervisor of the Town of the City of Champaign Township, terminated general assistance benefits without giving the recipients notice of termination and a hearing prior to that termination. Plaintiffs contend Defendant Roughton operates the general assistance program without published standards of eligibility or of the amount of aid to be given.

The second claim for relief is brought by persons who are or who were or who will be applying for general assistance or medical assistance benefits. In addition to the allegations of the First Claim for Relief, Plaintiffs contend Defendant Roughton denies applications for medical assistance or general assistance benefits without giving applicants notice of why they are not eligible and an opportunity for an appeal hearing after the application is denied.

On February 27, 1976, the United States Court of Appeals for the Seventh Circuit reversed and remanded the District Court's denial of preliminary injunction on the aforesaid allegations.

II.

STIPULATION

Plaintiffs and Defendant Roughton, Supervisor of City of Champaign Township, and Defendant, City of

Champaign Township, by their respective attorneys, having agreed to a satisfactory settlement of all the issues in this lawsuit and desiring to implement this settlement without the time and expense of future litigation, severally consent and agree to the Entry of this CONSENT DECREE and this Entry of Judgment without trial or adjudication of any issues of fact or law except as specifically provided in the Findings of Fact and Conclusions of Law which follow. The entry of this CONSENT DECREE and the entry of this judgment shall not constitute any evidence or admission by any party with respect to any such issues. Accordingly, the Plaintiffs and Defendant Roughton and Defendant City of Champaign Township, by their respective attorneys, do hereby submit by stipulation the form and substance of this CONSENT DECREE to the Court.

III.

FINDINGS OF FACTS

A.

The Court expressly finds as to the First Claim for Relief that:

1. Plaintiffs are proper persons to bring this action individually and on behalf of all persons who have been, now are or will be recipients of general assistance benefits from the Town of the City of Champaign Township (hereinafter referred to as "Plaintiff-Recipients"). Plaintiff-Recipients have satisfied all class action requisites of Rule 23 (b) (2) of the Federal Rules of Civil Procedure.

2. Plaintiff-Recipients seek to waive their claims for retroactive benefits in order to reach a complete and fair

settlement of all the issues and for entry of injunctive and declaratory relief.

3. The Defendant Roughton, acting in his official capacity on behalf of the Town of the City of Champaign Township, acted under color of state or local law, particularly including the Statutes of the State of Illinois, Article VI of the Illinois Public Aid Code. The Defendant Roughton is a proper party defendant.

4. The proposed settlement as embodied in this Consent Decree is fair and reasonable and in the best interests of all those affected by it. The absent class members have been given, pursuant to Rule 23 (e) of the Federal Rules of Civil Procedure, reasonable notice of the proposed settlement by way of newspaper publication, media coverage and the posting of notice at the offices of the Town of the City of Champaign. (A copy of said Notice to absent class members is attached as Consent Decree Exhibit 1.) The Court has previously approved the form of said Notice and the means of notifying absent class members.

B.

The Court expressly finds as to the Second Claim for Relief that:

1. Plaintiffs are proper persons to bring this action individually and on behalf of all persons who have made or who are making or who will make application for gen-

eral assistance and/or medical assistance benefits to the Town of the City of Champaign Township (hereinafter referred to as "Plaintiff-Applicants"). Plaintiff-Applicants have satisfied class action requisites of Rule 23 (b) (2) of the Federal Rules of Civil Procedure.

2. Plaintiff-Applicants seek to waive their claims for retroactive benefits in order to reach a complete and fair settlement of all issues and for entry of injunctive and declaratory relief.

3. Defendant Roughton acting in his official capacity on behalf of the Town of the City of Champaign Township, acted under color of state and local law, particularly including Articles V and VI of the Illinois Public Aid Code. Defendant Roughton is a proper party defendant.

4. The proposed settlement as embodied in this Consent Decree is fair and reasonable and in the best interests of all those affected by it. The absent class members have been given, pursuant to Rule 23 (e) of the Federal Rules of Civil Procedure, reasonable notice of the proposed settlement by way of newspaper publication, media coverage and the posting of notice at the offices of the Town of the City of Champaign. (A copy of said Notice to absent class members is attached as Consent Decree Exhibit 1). The Court has previously approved the form of said Notice and the means of notifying absent class members.

IV.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter and the parties under Title 28 U. S. C. § 1343 (3) and (4).

2. This action is declared to be a class action pursuant to Rule 23 (c) (1) of the Federal Rules of Civil Procedure. The class in the First Claim for Relief shall be comprised of all persons who are now or who were after March 23, 1970 or who will be receiving general assistance benefits from the Town of the City of Champaign Township.

3. The class in the Second Claim for Relief shall be comprised of all persons who have applied for or are applying for or who will be applying for general assistance or medical assistance benefits from the Town of the City of Champaign Township.

4. The Court approves, pursuant to Rule 23 (e) of the Federal Rules of Civil Procedure, the dismissal of Plaintiff-Recipients' claims for retroactive benefits and Plaintiff-Applicants' claims for retroactive benefits in consideration of the provisions of this Consent Decree, particularly the entry of a permanent injunction against the Defendant Roughton, et al.

5. The Plaintiff-Recipients have from this day forward a federal constitutional right under the Fourteenth Amendment to receive adequate notice of any termination [*sic*] benefits and an evidentiary hearing before those benefits may be discontinued. *Goldberg v. Kelly*, 397 U. S. 254, 260-268 (1970).

6. The Plaintiff-Applicants have from this day forward a federal constitutional right under the Fourteenth Amendment to:

a) written notice detailing the specific reasons why the application is being denied and setting for the Plaintiff-Applicants' right to appeal;

b) a timely evidentiary hearing, as prescribed by *Goldberg v. Kelly, supra,* after the denial of their application or termination of their assistance;

7. Both Plaintiff-Recipients and Plaintiff-Applicants have from this day forward a federal constitutional right under the Fourteenth Amendment to Defendant Roughton using published, consistent standards governing eligibility and the amount of assistance given, as provided by *White v. Roughton,* — F. 2d — (7th Cir., decided February 27, 1976).

8. To insure the aforesaid federal constitutional rights will be protected, and based on the Stipulation and Findings of Facts herein, a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure shall issue directing Defendant Roughton to forthwith bring the township general assistance program into compliance with Plaintiff-Recipients' and Plaintiff-Applicants' federal constitutional rights to due process of law, as specifically listed above.

9. To insure protection of these constitutional rights and to comply with *Goldberg v. Kelly, supra,* and *White v. Roughton, supra,* it is necessary that Defendant Roughton be required from this day forward to administer general assistance in the Town of the City of Champaign, including but not limited to application procedures, eligibility requirements, appeal procedures, and amounts and categories of assistance in accordance with the public written standards adopted by the Town of the City of Champaign; the standards shall from this day forward be substantially in compliance with the standards adopted pursuant to this settlement and attached hereto as Exhibit 2.

10. Plaintiff-Recipients and Plaintiff-Applicants are entitled to declaratory relief as herein above set out in recognition of their federal constitutional rights to procedural due process from Defendant Roughton, et al.

V.

ENTRY OF JUDGMENT

The Court being fully advised in the premises and based upon the Findings of Facts and Conclusions of Law hereinabove set out, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant Roughton, his successor in office, agents, servants and employees, and the Town of the City of Champaign (hereafter referred to as Defendant Roughton, et al.), are permanently enjoined pursuant to Rule 65 of the Federal Rules of Civil Procedure from failing to provide from this day forward Plaintiff-Recipients' class, defined as all persons who are now or who were after March 23, 1970 or who will be receiving general assistance benefits from the Town of the City of Champaign Township, with adequate written notice that their general assistance benefits under Article VI of the Illinois Public Aid Code will be reduced, suspended or terminated within ten (10) calendar days prior to the expected date of receipt of the reduced, suspended or terminated assistance. This written notice must disclose the following information: (a) a statement of the action to be taken; (b) a statement of the reason for the action; (c) a specific policy or statutory reference which supports such action; (d) a clear statement of the individual's right to appeal the decision; and (e) a statement that if the individual

files an appeal within ten (10) calendar days of the date of the timely notice, assistance will be continued at the level in effect prior to the proposed action pending the results of the appeal.

2. Defendant Roughton, et al. are permanently enjoined from failing to apply consistent written standards for eligibility and the amount of assistance to be given to Plaintiff-Recipients and Plaintiff-Applicants. A copy of the standards adopted by Defendant Roughton, et al. pursuant to this settlement is attached hereto as Consent Decree Exhibit 2 and incorporated herein by reference.

3. Defendant Roughton, et al. are permanently enjoined from failing or refusing from this day forward to post in a conspicuous location in the offices of the Town of the City of Champaign all guidelines for eligibility, amount of aid to be given, and hearing and appeal procedures.

4. Defendant Roughton, et al. are permanently enjoined from failing or refusing from this day forward to provide Plaintiff-Applicants' class defined as all persons who have after March 23, 1970 applied for or will apply for medical assistance or general assistance benefits from the Town of the City of Champaign Township, with written notice of how their applications for general assistance and/or medical assistance have been disposed of. If the application is approved, the individual applicant shall be informed of the amount of aid to be provided. If the application is approved in part and denied in part, or if the application is denied, the individual applicant will be informed by written notice which shall contain the following information: (a) a statement of why he or she is not

eligible; (b) a specific policy or statutory reference which supports such action; and (c) a statement of the individual's right to appeal the decision.

5. Plaintiff-Applicants' claims for retroactive benefits are hereby dismissed with prejudice.

6. Plaintiff-Recipients' claims for retroactive benefits are hereby dismissed with prejudice.

7. Defendant Roughton, et al. are ordered to render all possible assistance to applicants for financial aid and social service and in securing proof in support of the applications pursuant to Section 11-4 of the Public Aid Code.

8. A Declaratory Judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, is awarded to Plaintiff-Recipients and against Defendant Roughton, et al. that Plaintiff-Recipients have a constitutional right under the Fourteenth Amendment to the United States Constitution to receive written notice prior to the termination of their general assistance benefits detailing the reasons why said benefits were being terminated; informing Plaintiff-Recipients of their right to appeal the termination; and that Plaintiff-Recipients are entitled under the Fourteenth Amendment to the United States Constitution to published consistent standards for continuing eligibility and the amount of assistance given.

9. A Declaratory Judgment pursuant to Rule 57 is awarded to Plaintiff-Applicants and against Defendant

Roughton, et al. that Plaintiff-Applicants are entitled under the Fourteenth Amendment to the United States Constitution to have published consistent standards of eligibility and of the amount of assistance available applied to them; to receive timely written notice of the decision that the general assistance and/or medical assistance application was being denied; to receive written notice that they have the right to appeal the decision denying the application.

10. That Defendant Roughton, et al. are hereby enjoined from enforcing any rules and regulations of the Town of the City of Champaign Township insofar as such enforcements are in conflict with the Orders of Court issued as a part of or pursuant to this Decree.

11. Plaintiff-Applicants and Plaintiff-Recipients are awarded a judgment against Defendant Roughton, et al. for the costs of this action and for attorneys fees in the amount of $2,500.00.

12. That Defendant Roughton, et al. shall implement this Consent Decree with reasonable dispatch and shall make a report to this Court six (6) months from the date hereof of their efforts and results achieving compliance with this Consent Decree and thereafter as may be ordered by this Court.

13. The Court hereby retains jurisdiction of this action to enforce and modify, if necessary, the provisions of this Decree.

Entered This 8th day of June, 1976.

/s/ Henry S. Wise
United States District Judge

Approved:

/s/ James L. Capel, Jr.
Meyer, Capel, Hirschfeld, Muncy, Jahn and Aldeen
Attorney for Defendants C. VAUGHN ROUGHTON Township Supervisor of the City of Champaign Township and CITY OF CHAMPAIGN TOWNSHIP

/s/ Eugene M. Thirolf
Land of Lincoln Legal Assistance Foundation, Inc.
Attorney for Plaintiff-Recipients' and Plaintiff-Applicants' Class and LEON WHITE, ELESTER WALKER and BEATRICE SILAGY, individually

GENERAL ASSISTANCE STANDARDS OF THE TOWNSHIP OF THE CITY OF CHAMPAIGN OF CHAMPAIGN COUNTY, ILLINOIS

1. INTRODUCTION

The Supervisor of general assistance shall see that financial aid in meeting basic maintenance requirements for a livelihood compatible with health and well-being, plus any necessary treatment, care and supplies required because of illness or disability are given to or on behalf of persons who meet the eligibility conditions.

2. DETERMINING ELIGIBILITY

2-1. The Application Interview

The interviewer shall give the applicant pertinent information regarding the general assistance benefits for which he or she may be eligible and the eligibility requirement (e. g., standards used to determine need, prompt reporting of changes which may affect eligibility and periodic redetermination of eligibility and provisions covering right of appeal and fair hearing, and confidentiality of the information).

Application for general assistance may be made in person, or by any submittal of the written, signed application if the applicant is unable to go to the township office. Each person coming to the office seeking general assistance of any kind shall be given an application interview, and a written application shall be filled out by each such person, with help from the Township Supervisor or staff, if necessary.

Once an application has been filled out, establishing initial eligibility is the *joint* responsibility of the applicant and the Supervisor. It is the responsibility of the applicant to provide, to the extent he or she is able, the factual information and evidence necessary to establish his eligibility. If he or she is not able to do this, the Supervisor or staff, with the consent of the applicant, shall assist in obtaining such information. If the application [*sic*] refuses to give such consent, and information is therefore unavailable, the application will be denied.

All applications will be retained by the Supervisor, and a record shall be kept of each application interview.

Applicants who reasonably appear eligible for categorical assistance from the Illinois Department of Public Aid are to be referred to the county public aid office immediately by use of DPA form 221, Referral and Disposition of Application. By statute, persons who are eligible for financial or medical assistance from the Illinois Department of Public Aid are not eligible for general assistance.

Applicants should be told to apply for pensions or benefits for which they may be eligible, and employable adults not currently employed should be told to register for employment with the Illinois State Employment Service or other suitable job placement services.

2-2. Disposition of Application

The initial determination of eligibility for an application for general assistance must be completed within thirty (30) calendar days. This time standard

may be exceeded only when a decision cannot be reached because of failure or delay on the applicant's part or the applicant's or the Supervisor's inability to obtain information essential to a decision. Applications requiring emergency assistance shall be handled on a priority basis and the emergency need shall be handled as soon as possible; but any payments on an emergency basis shall not constitute a final determination as to eligibility.

Contemporaneous with any determination made on an application for general assistance, the Supervisor shall complete the determination of eligibility form attached and incorporated herein, showing the action taken, and the Supervisor shall deliver by mail or otherwise a copy of this form to the applicant. The determination of eligibility is complete only upon the delivery of the determination of eligibility form.

2-3. Determining Need

The Supervisor will aid all persons whose income is insufficient to meet his or her basic maintenance needs. Within the standards contained herein, past due expenses and charges will be paid if incurred within three (3) months of date of application and if said past due expenses and charges are necessary to maintain a place of residence for an applicant or for necessary services such as utility service for heat, light or water.

Due regard shall be given to the requirements and conditions existing in each case as reflected in the applicant's budgeted needs. The grant shall be sufficient when added to all other income, money contributions and support in excess of any excluded income or re-

sources to provide the person with a livelihood compatible with health and well-being.

2-4. Emergency Assistance

Emergency assistance for basic maintenance shall be provided when necessary for an applicant's or recipient's health and well-being. Such emergency assistance shall include but is not limited to vouchers for purchase of food or vouchers for purchase of foodstamps for persons who are without food and without means to obtain food. The provision of emergency assistance does not constitute a final determination of eligibility for continued assistance. Further, eligibility for such emergency assistance shall not be conditioned on eligibility for continued assistance, but shall be tested on the basis of the applicant's immediate needs for health and well-being.

2-5. Resources

In determining whether an applicant has the financial ability to help himself or herself, the Supervisor will also consider the value of his or her resources. A resource is a source of help or supply either tangible (e. g., real or personal property, including an equity in such property), or intangible (e. g., a skill in performing a certain kind of work, or a relative or friend's willingness to provide a service).

Any applicant or recipient must take all legal action in an attempt to obtain support from any person legally responsible for the support of the applicant or recipient or dependents for whom assistance is requested. Refusal to take such action will result in ter-

mination or denial of financial aid for so long as the refusal persists.

2-6. Deferred Consideration of Resources

It may be necessary, in individual case situations, to defer consideration of certain resources in determining need at any given time. In the case of non-homestead property not immediately salable, assistance may be authorized for a period not to exceed six months, pending its final disposition. Other examples of resources for which consideration may have to be deferred are: fractional interest in real property when sale or division is not indicated, loan value of life insurance while adjustment is pending, financial assistance or service from temporarily ill or unemployed relatives. When [sic] it can be assumed at time of application that the period of eligibility for assistance will not exceed ninety (90) days, a final decision concerning use or disposition of certain assets may be deferred ninety (90) days from the date the initial grant is authorized. Following this period, the individual or family will be expected to dispose of non-exempt assets and use the resources.

The decision to obtain a loan, or to sell the real or personal property, should be based on the amount of equity in the item, and the practicality of converting the equity into cash through sale or use as collateral for a loan.

2-7. Assets Exempt from Consideration

In determining eligibility for assistance, the following assets are exempt from consideration: home-

stead property, cemetery lot or burial crypt owned prior to application for assistance, household furnishings in current use, business or farming equipment necessary to production of income, one automobile per family if essential, cash value not in excess of $1,000.00. (To be considered *essential,* the vehicle must be the only available appropriate means of transportation to seek or retain employment, or to reach the source of medical care. *Cash value* means current market value of vehicle at time application for assistance is made or redetermination of eligibility is performed.) Insurance on the life of an eligible member of a family group will not effect [*sic*] eligibility for assistance when the insurance has no cash surrender value.

2-8. Budget

Form DPA 708, Monthly Family General Assistance Budget, or other appropriate form, shall be filled out for each applicant or recipient to determine or redetermine eligibility and establish the amount of the assistance payment. The budget is to be revised whenever changed circumstances affect the amount of the grant. Whenever available income does not exceed the budgeted needs, assistance is to be provided to otherwise eligible persons.

2-9. Requirement of Accepting Employment

Employable applicants and recipients, unemployed or employed less than full working time in their occupation, are to register for employment with the Illinois State Employment Service or other suitable job placement services. Periodical re-registration and utilization of such job placement services are required.

Refusal without good cause to accept an offer of suitable employment through the Illinois State Employment Service or any other bona fide offer of suitable employment will result in termination or denial of financial aid for as long as the refusal persists.

2-10. Residency

There are no durational residency requirements. A person must be a bona fide resident of the township only; however, if a person who is a resident of the State of Illinois moves from one township to another, the township in which he last so resided shall be charged with providing the necessary aid until the person has resided in the township to which he has moved for a continuous period of six months.

3. STANDARDS FOR BASIC NEEDS

3-1. In General

The Supervisor hereby establishes a budget that represents prevailing needs relevant to the community. Assistance shall be granted and applied uniformly within this township according to these standards.

A need for assistance is recognized when the applicant's budget shows income and non-exempt resources insufficient for total basic needs as established herein.

The grant shall always be sufficient when added to all other income, money contributions and support in excess of any excluded income or resources, to provide the person with a livelihood compatible with health and well-being.

Listed below are the major types of benefits which may be given. When necessary, assistance in other forms may be provided.

3-2. Food

The food allowance as shown herein shall be included in the budget unless the applicant or recipient is to purchase foodstamps while receiving general assistance, and then the purchase price of the foodstamps shall be included in the budget.

The Township Supervisor or staff shall issue vouchers or food orders for the purchase of food, or in lieu of such direct food orders may issue vouchers for the purchase of foodstamps. As a condition of eligibility, an applicant or recipient must apply for foodstamps if requested to do so by the Township Supervisor or staff.

The food allowance shown herein shall be supplemented in an appropriate amount for persons requiring a special diet, when a physician has stated in writing the need for such special diet.

TABLE OF WEEKLY FOOD ORDERS

Number in the Household	Allowance
1	$15.00
2	24.00
3	30.00
4	33.00
5	36.00
6	39.00
7	42.00
8	45.00
9	48.00

Add $3.00 for each additional person in the household.

3-3. Clothing

Clothing grants are made as needed, except when assistance is provided on a continuing basis, when the recipient's income is insufficient to meet needs on the General Assistance Standard. In those cases, a $7.50 monthly amount for clothing shall be included in the computation of the amount of the supplementary grant.

Essential clothing shall be provided or replaced when clothing has been destroyed by fire, flood or other disaster, or specified items are needed for patient's entry into hospital, rehabilitation, or nursing facility. The amount at any one time is limited to the cost of those items immediately needed.

Clothing in Group Care Facilities

The maximum allowance for clothing for General Assistance recipients in a group care facility, such as a nursing home or sheltered care home, is less than the allowance for persons living in the community.

3-4. Household Supplies and Personal Essentials

The allowance for household supplies and personal essentials shall cover the cost of cleaning supplies and replacement of essential household items such as hand laundry equipment, linens, dishes and cooking utensils, and of items for personal care, first aid supplies, laundry supplies and educational needs.

A special allowance for household supplies is approved when the items have been destroyed by fire,

flood or other disaster or additional bed linens are required because the recipient is confined to bed most of the day or is incontinent.

Personal Essentials in Group Care Facilities

The maximum allowance for personal essentials for General Assistance recipients in a group care facility, such as a nursing home or sheltered care home, is less than the allowance for persons living in the community.

3-5. Transportation

Transportation costs may be budgeted as needed for employment, assignment to work project, seeking work or receiving unemployment compensation benefits, regular school attendance, education and/or vocational training, travel to source of medical care, travel to enable recipient to take legal action in non-support or paternity cases.

3-6. Shelter

Shelter needs for rent or ownership costs shall be allowed at the actual rental amount, but not to exceed the monthly maximum for the specific size household designated below:

(utilities not included)

1	2	3	4	5	6	7	8
$ 94	$108	$118	$121	$136	$140	$144	$148

To arrive at the net rent when rent includes utilities, heat, water or furnishings, the Supervisor deducts a standard allowance for heat, water or furnishings.

When rent or net rent is in excess of the maximum, the Supervisor and the recipient are to request the landlord to reduce the rent to a cost within the maximum.

Exceptions to the rent or net rent maximum may be approved by the Supervisor when necessary to supply the household with housing when no cheaper housing is readily available.

3-7. Fuel and Utility Allowance

Water, electricity, cooking fuel and heating fuel not included in the rent are budget [*sic*] according to the actual monthly or periodic billing of the utility.

3-8. Telephone

When the recipient does not have access to a telephone, [*sic*] the service is essential because of illness, employment, or isolated residence, the cost of telephone service is allowed at the minimum rate. If the recipient is paying for a non-essential telephone, his management relating to basic needs is to be discussed. No allowance is made for security deposit or past due bills.

3-9. Traveler's Aid

The Supervisor will provide all necessary aid to those persons passing through the township who will suffer great hardship and privation unless general assistance is provided. Such aid will include, but not be limited to, temporary food and lodging and such other assistance as will permit the person to reasonably complete his or her journey. A person without funds or re-

sources to obtain food or lodging or pay the cost of transportation shall be deemed to be a person who will suffer great hardship and privation.

3-10. Expenses of Employment

The following items may be budgeted as working expenses for employed persons. Items required by the job which are not furnished by the employer or included in the basic clothing standard shall be provided. Transportation, paid at the most reasonable rate when not furnished by the work sponsor, shall be budgeted. Other expenses, such as required training expenses, are met by direct vendor payment or check, if necessary for recipient to pay for the item.

4. AUTHORIZATION OF ASSISTANCE

4-1. Unspecified Categories of Assistance

The amount and nature of assistance [*sic*] for basic maintenance, not included herein, shall be determined in accordance with published, consistent local budget standards.

Payments may also be made to provide persons with necessary treatment, care and supplies required by illness or disability, with such payments not to exceed $185 monthly when nursing home care is required.

4-2. Form of Issuance

Assistance for basic needs, [*sic*] (e. g., food, clothing, shelter, etc.) may be issued in whole or in part in the form of disbursing orders for merchandise or serv-

ices in specific amounts, to be obtained by the applicant or recipient from specified vendors.

Medical assistance [*sic*], funeral and burial costs will be met by direct vendor payment.

5. FUNERAL AND BURIAL

Upon the death of a recipient, there shall be paid by direct vendor payment reasonable amounts up to $350 as may be necessary to meet the cost of funeral, burial space, and cemeter [*sic*] charges if the estate is insufficient toapy [*sic*] the funeral and burial expenses, and there are no other resources, including contributions from legally responsible relatives, available for such purposes. Reimbursement may be made to any person not financially responsible for such costs.

Burial of Veterans and Their Relatives

For recipients of public assistance, the counties (as distinct from the County Departments of Public Aid or the General Assistance Units) retain responsibility for burial of veterans and their minor children if they are without sufficient means to defray funeral expenses. Relatives or friends seeking county payment for burial of a veteran or his minor children may be referred to the county's Veterans' Assistance Commission if there is one established, or to the Office of the County Clerk.

6. AID TO THE MEDICALLY INDIGENT

The AMI Program is designed to provide aid in meeting the costs of necessary medical, hospital care, nursing home care, emergency dental care, or burial for

those persons with marginal income, so they may remain self-supporting. For this reason, medical services are provided to individuals on the basis of an eligibility requirement more liberal than that in effect for General Assistance. The person is given such case [*sic*] as may be necessary and proper, including transportation, and decent burial if required. The amount and nature of the care shall be determined in accordance with a uniform standard of eligibility established by the Illinois Department of Public Aid and its rules and regulations in the General Assistance Manual.

The standard shall include provision for determining what, if any, portion of the income, property or other resources of an applicant or recipient is available to meet the cost of necessary care. In determining eligibility, the estimated expense of medical care and/or funeral and burial over a three-month period is considered against the income and resources available to meet such expense in the same time, according to the AMI Income and Assets Standards. If these persons are in need of additional assistance or will require other assistance upon discharge from the hospital, they are to file an application for general assistance. All applicants or recipients are to be informed of statutory provisions assuring right of appeal and fair hearing, and also of the confidentiality of information.

Persons may not receive benefits under the AMI program at the same time they are receiving general assistance, categorical assistance, or Supplementary Security Income (SSI). When general general [*sic*] assistance recipients require medical care, or payment for funeral

and burial expenses, these expenses are considered in accordance with prescribed policies and procedures governing the administration of general assistance. These cases are not reported as medically indigent cases even though they require only medical services in any one month.

An applicant for Assistance to the Medically Indigent who may be eligible for one of the federally-aided programs is required to file an application for such assistance when there is evidence of current and continuing need for medical care.

7. RIGHTS OF APPLICANTS AND RECIPIENTS

7-1. There shall be no discrimination and no denial of assistance under any program of general assistance or medical assistance on account of the race, sex, religion, color, national origin, or political affiliation of any applicant for or recipient of General Assistance.

7-2. Confidentiality

For the protection of applicants and recipients, the local governmental units and their respective officers and employees are prohibited except as provided below from disclosing the contents of any records, files, papers, and communications, except for purposes directly connected with the administration of General Assistance or as required by law. Local governmental units may report to appropriate law enforcement officials the abandonment by a parent of a child, or the birth of a child out of wedlock to a mother under 16, necessitating application for or receipt of General Assistance.

Supervisors of General Assistance shall, on or before the tenth day of each month, file, in their offices a report showing the names and addresses of all recipients in the county, city, village or incorporated town, or township, as the case may be, receiving general assistance, together with the amounts paid to each during the preceding month.

7-3. Notice to Client

Every applicant for assistance has the right to receive a written and timely notice of disposition of his application.

Every recipient of assistance has the right to receive a written and timely notice whenever his assistance is reduced, suspended or terminated.

In order for a notice to a recipient to be "timely" it must be mailed to the recipient at least 10 calendar days prior to the expected date of receipt of the reduced, suspended, or terminated assistance.

In order for a notice to an applicant to be "timely" it must be mailed to the applicant within thirty (30) days of the date the application is made.

The above notices must contain the following information:

A. A clear statement of the action to be taken.

B. A clear statement of the reason for the action.

C. A specific policy reference which supports such action.

D. A complete statement of the client's right to appeal.

The "timely" notice to the recipient shall contain, in addition to the above, a statement indicating that assistance will be continued at the previous level if an appeal is filed within 10 days of the date on the notice.

7-4. Right to Appeal

If an applicant or recipient is in any way dissatisfied with the decision of the township supervisor in the amount of his or her grant, reduction or termination of assistance, or his or her application has not been approved or disapproved within 15 calendar days from the day it was filed, he or she has a right of appeal to the Public Aid Committee.

The appeal is to be made within 60 days of the date of decision in question, and in the event an appeal is not made, the action of the Supervisor shall be final.

7-5. Aiding the Appeal Process

The Township Supervisor shall explain to all applicants their right to appeal decisions made and these regulations shall be made readily available to all applicants and recipients and to any other interested person upon request.

The Supervisor is also required to inform applicants and recipients of their right to appeal at any time if they express dissatisfaction, and to help those persons desiring to make an appeal and assisting [*sic*] the applicant or recipient in procedures to be followed.

7-6. The Appeal Process

The client must notify the Supervisor of his or her intent to appeal by filing a Notice of Appeal form with the Supervisor. If a request for an appeal is made after the 60 day time period, the Supervisor must advise the client that his right to file an appeal is not affected. However, the client should also be advised that the Final Administrative Decision will not be in his favor if it is determined that the 60 day time period applies to his situation and has, in fact, expired.

Local office staff shall document in the case record all decisions and actions related to client's requests, and indicate the date of verbal or written notification to the client of such decisions.

A request for an appeal must be made on a Notice of Appeal form provided to the client by the Supervisor. The local office shall assist in the completion of the form, if requested. Notice of Appeal Forms shall be made available to the client or his or her representative.

The date that the Notice of Appeal form is received by the Supervisor is the date used in determining whether or not the appeal was made within the 60 day period.

Within 48 hours of the receipt of the request, the local office must forward the original to the Public Aid Committee. A copy of the request must be retained in the local office files.

If an appeal is filed within 10 days of the date of the decision to reduce or terminate assistance to

a recipient, the Supervisor must postpone the action to reduce, suspend or terminate assistance pending the results of the fair hearing process.

The Supervisor shall request an informal conference with the appellant and/or his authorized representative. The Supervisor shall use this informal conference to explain the basis for the appealed decision and to allow the appellant to present any additional information to support his position. If necessary, the Supervisor will contact other staff involved in the appealed decision as part of the informal conference procedure. As a result of this review the Supervisor may modify, reverse or leave unchanged the decision.

If the Supervisor reverses or modifies the decision on the basis of the informal conference, he or she shall ask the applicant or recipient to sign a written request to withdraw the appeal. However, the Supervisor should take care in such cases not to interfere with an applicant's or a recipient's right to continue with the appeal if he or she chooses.

Upon written withdrawal of the appeal, the Supervisor shall:

1. Mail the original of the Withdrawal of Appeal to the Public Aid Committee.

2. Deliver a copy to the appellant and/or the appellant's authorized representative.

3. Retain a copy for local office files.

Case materials are to be examined only in the presence of a local office employee. The appellant or his representative may take notes on the material ex-

amined, but copies of this material are not to be supplied.

Payment for transportation and child care expenses for the appellant can be made by vendor payment.

The hearing will be informal and the proceedings will be recorded. The appellant may present his own case or have a spokesman present it for him and may bring witnesses to the hearing. The appellant and legal or other representative will have the opportunity before and during the hearing to examine material which the Supervisor plans to have available, which must include:

1. The Statement of Facts.

2. Pertinent case information including all documents to be used at the hearing.

3. Information related to the budget.

Adopted by the Supervisor of the Town of the City of Champaign and the Town Board of the City of Champaign, this — day of April, 1976.

TOWN BOARD

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C. VAUGHN ROUGHTON
Township Supervisor

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